



FEDERAL TRADE COMMISSION

16 CFR Part 660

RIN 3084-AB63

Duties of Furnishers of Information to Consumer Reporting Agencies Rule

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) is issuing a final rule (“Final Rule”) to amend the Duties of Furnishers of Information to Consumer Reporting Agencies Rule (“Furnisher Rule”) to correspond to changes made to the Fair Credit Reporting Act (“FCRA”) by the Dodd-Frank Act.

DATES: The rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: David Lincicum (202-326-2773), Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

A. *The Furnisher Rule*

The Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”) was signed into law on December 4, 2003. Public Law 108-159, 117 Stat. 1952. Section 312 of the FACT Act amended section 623¹ of the FCRA by requiring the FTC, with other agencies, to issue guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to consumer reporting agencies (“CRAs”) and to prescribe regulations requiring furnishers to establish reasonable policies and

¹ 15 U.S.C. 1681s-2.

procedures for implementing the guidelines. Section 312 also required the Commission and the other agencies to issue regulations identifying the circumstances under which a furnisher must reinvestigate direct consumer disputes concerning the accuracy of information provided by the furnisher to a CRA. On July 1, 2009, the Commission issued the Furnisher Rule and the accompanying guidelines that took effect on July 1, 2010.²

The Rule requires furnishers to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that they furnish to a CRA.³ The Rule also requires that furnishers respond to direct disputes from consumers.⁴

B. Dodd-Frank Act

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) was signed into law in 2010.⁵ The Dodd-Frank Act substantially changed the federal legal framework for financial services providers. Among the changes, the Dodd-Frank Act transferred to the Consumer Financial Protection Bureau (“CFPB”) the Commission’s rulemaking authority under portions of the FCRA.⁶ Accordingly, in 2012, the Commission rescinded several of its FCRA rules, which had been replaced by rules issued by the CFPB.⁷ The FTC retained rulemaking authority for other rules to the extent the rules apply to motor vehicle dealers described in section 1029(a) of the Dodd-Frank Act⁸ predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both (“motor vehicle dealers”).⁹ The retained rules include the Furnisher Rule, which now applies only to motor vehicle dealers.¹⁰ Furnishers

² 74 FR 31484.

³ 16 CFR 660.3.

⁴ 16 CFR 660.4.

⁵ Pub. L. 111-203 (2010).

⁶ 15 U.S.C. 1681 *et seq.* The Dodd-Frank Act does not transfer to the CFPB rulemaking authority for section 615(e) of the FCRA (“Red Flag Guidelines and Regulations Required”) and section 628 of the FCRA (“Disposal of Records”). *See* 15 U.S.C. 1681s(e).

⁷ 77 FR 22200 (April 13, 2012); 12 U.S.C. 5519.

⁸ 15 U.S.C. 5519.

⁹ 77 FR 22200.

originally covered by the Furnisher Rule that are not motor vehicle dealers are covered by the CFPB's rule.¹¹ The Commission continues to have authority to enforce the CFPB's rule and has brought several actions alleging violations of the rule.¹²

II. Regulatory Review of the Furnisher Rule

On September 30, 2020, the Commission solicited comments on the Furnisher Rule as part of its periodic review of its rules and guides. The Commission sought information about the costs and benefits of the Rule, and its regulatory and economic impact. In addition, the Commission proposed amending sections 660.1 and 660.2 to narrow the scope of the Furnisher Rule to motor vehicle dealers excluded from CFPB jurisdiction as described in the Dodd-Frank Act. The Commission received one comment stating that the Furnisher Rule assists millions of consumers to discover inaccuracies in their consumer reports and emphasizing the need for continued enforcement of the Rule.¹³ The Commission agrees with this commenter.

III. Overview of Final Rule

The Commission adopted the Furnisher Rule at a time when it had rulemaking authority for a broader group of consumer report users. While the Dodd-Frank Act did not change the Commission's enforcement authority for the Furnisher Rule, it did narrow the Commission's rulemaking authority with respect to the Rule. It now covers only motor vehicle dealers.¹⁴ The amendments in the Dodd-Frank Act necessitate technical revisions to the Furnisher Rule to ensure the regulation is consistent with the

¹⁰ *Id.*

¹¹ 12 CFR 1022.40-43.

¹² See, e.g., *FTC v. Midwest Recovery Systems, LLC*, Case No. 4:20-cv-01674 (E.D. Mo. November 25, 2020); *United States v. Credit Protection Association, LP*, Case No. 3:16-cv-01255-D (N.D. Tex. May 9, 2016); *United States v. Consumer Portfolio Services, Inc.*, Case No. SACV14-00819 (C.D. Cal. May 28, 2014); *United States v. Telecheck Services, Inc.*, Case No. 1:14-cv-00062 (D.D.C. January 16, 2014).

¹³ East Bay Community Law Center (Comment 3), available at www.regulations.gov/comment/FTC-2020-0072-0003. The Commission received two comments concerning consumer reporting agency activities unrelated to the Furnisher Rule. The comments are available at www.regulations.gov/document/FTC-2020-0068-0001/comment.

¹⁴ 15 U.S.C. 1681s(e)(1); 12 U.S.C. 5519.

text of the amended FCRA. Accordingly, the Commission amends the Furnisher Rule to properly reflect the Rule's scope.

The amendment to section 660.1 narrows the scope of the Furnisher Rule to "motor vehicle dealers," as defined in amended section 660.2.

The amendment to section 660.2 adds a definition of "motor vehicle dealer" that defines motor vehicle dealers as those entities excluded from CFPB jurisdiction as described in the Dodd-Frank Act.¹⁵ The amendments also change the definition of "identity theft" by replacing the Rule's reference to 16 CFR 603.2(a), a provision of an FTC rule that has since been rescinded,¹⁶ with a reference to 12 CFR 1022.3(h), the equivalent provision in the CFPB's rule. The amendments make no other substantive changes to the Rule.

IV. Paperwork Reduction Act

The Furnisher Rule contains information collection requirements as defined by 5 CFR 1320.3(c), the definitional provision within the Office of Management and Budget ("OMB") regulations that implement the Paperwork Reduction Act ("PRA"). 44 U.S.C. 3501 *et seq.* OMB has approved the Rule's existing information collection requirements through July 31, 2022 (OMB Control No. 3084-0144). Under the existing clearance, the FTC has attributed to itself the estimated burden regarding all motor vehicle dealers and then shares equally the remaining estimated PRA burden with the CFPB for other persons for which both agencies have enforcement authority regarding the Furnisher Rule.

The Final Rule amends 16 CFR part 660. The amendments do not modify or add to information collection requirements previously approved by OMB. The amendments narrow the scope to motor vehicle dealers. The Rule's OMB clearance already reflects

¹⁵ 12 U.S.C. 5519.

¹⁶ 77 FR 22200 (April 13, 2012).

that change. Therefore, the Commission does not believe the amendments substantially or materially modify any “collections of information” as defined by the PRA.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency to either provide an Initial Regulatory Flexibility Analysis (“IRFA”) with a proposed rule, or certify that the proposed rule will not have a significant impact on a substantial number of small entities.¹⁷ The Commission published an Initial Regulatory Flexibility Analysis in order to inquire into the impact of the proposed Rule on small entities.¹⁸ The Commission received no responsive comments.

The Commission does not believe these amendments have the threshold impact on small entities. The amendments effectuate changes to the Dodd-Frank Act and will not impose costs on small motor vehicle dealers because the amendments are for clarification purposes and will not result in any increased burden on any motor vehicle dealer. Thus, a small entity that complies with current law need not take any different or additional action under the Final Rule. Therefore, the Commission certifies that amending the Furnisher Rule will not have a significant economic impact on a substantial number of small businesses.

Although the Commission certifies under the RFA the Final Rule will not have a significant impact on a substantial number of small entities, and hereby provides notice of that certification to the Small Business Administration, the Commission nonetheless has determined that publishing a final regulatory flexibility analysis (“FRFA”) is appropriate to ensure the impact of the rule is fully addressed. Therefore, the Commission has prepared the following analysis:

¹⁷ 5 U.S.C. 603-605.

¹⁸ 85 FR 61659, 61661 (Sept. 30, 2020).

A. Need for and Objectives of the Final Rule

To address the Dodd-Frank Act's changes to the Commission's rulemaking authority, the amendments clarify that the Rule applies only to motor vehicle dealers.

B. Significant Issues Raised in Public Comments in Response to the IRFA

The Commission did not receive any comments that addressed the burden on small entities. In addition, the Commission did not receive any comments filed by the Chief Counsel for Advocacy of the Small Business Administration ("SBA").

C. Estimate of Number of Small Entities To Which the Final Rule Will Apply

The Commission anticipates many covered motor vehicle dealers may qualify as small businesses according to the applicable SBA size standards. As explained in the IRFA, however, determining a precise estimate of the number of small entities is not readily feasible. No commenters addressed this issue. Nonetheless, as discussed above, these amendments do not add any additional burdens on any covered small businesses.

D. Projected Reporting, Recordkeeping, and Other Compliance

*Requirements, Including Classes of Covered Small Entities and
Professional Skills Needed To Comply*

The amendments impose no new reporting, recordkeeping, or other compliance requirements.

*E. Description of Steps Taken To Minimize Significant Economic Impact, If
Any, on Small Entities, Including Alternatives*

The Commission did not propose any specific small entity exemption or other significant alternatives because the amendments will not increase reporting requirements and will not impose any new requirements or compliance costs.

VI. Other Matters

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a “major rule,” as defined by 5 U.S.C. 804(2).

List of Subjects in 16 CFR Part 660

Consumer protection, Credit, Trade practices.

For the reasons stated above, the Federal Trade Commission amends part 660 of title 16 of the Code of Federal Regulations as follows:

1. Revise the authority section for part 660 to read as follows:

Authority: Pub. L. 108-159, sec. 311; 15 U.S.C. 1681s-2; 12 U.S.C. 5519(d).

2. Revise § 660.1 to read as follows:

§ 660.1 Scope.

This part applies to furnishers of information to consumer reporting agencies that are motor vehicle dealers as defined by § 660.2 of this part (referred to as “furnishers”).

3. In § 660.2, revise paragraph (d) and add paragraph (f) to read as follows:

§ 660.2 Definitions.

* * * * *

(d) *Identity theft* has the same meaning as in 12 CFR 1022.3(h).

* * * * *

(f) *Motor vehicle dealer* means any person excluded from Consumer Financial Protection Bureau jurisdiction as described in 12 U.S.C. 5519.

By direction of the Commission.

April J. Tabor,

Secretary.